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Honorable Griffin B. Bell
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Griffin:

On 17 August I wrote to solicit your support for a limited legislative initiative respecting the unauthorized disclosure of national security information. I continue to believe that new legislation in this field is badly needed, and I therefore want to renew my request for your consideration of my August proposal or other variations of that proposal.

Yours,

STANSFIELD TURNER

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Washington, D.C. 20505

OLC 78-2565/E

17 August 1978

Honorable Griffin B. Bell
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Griffin:

I am writing to urge your support of a limited legislative initiative having as its objective protection under law of a narrow category of national security information that I believe to be inadequately protected by existing statutes. The category of information to which I refer consists of classified information concerning the identity of CIA officers or agents, and their relationships with CIA. I am sure you will agree that this sort of information ranks close to the top on any sensitivity scale, and that it is at the innermost core of what must be protected against disclosure if an effective clandestine intelligence service is to be maintained.

I am not suggesting of course that there are no existing laws dealing with the unauthorized disclosure of this category of information. I am satisfied, for example, that in classic espionage situations, where the information is communicated in a clandestine fashion to an agent of a foreign power, the conduct is punishable under 18 U.S.C. §794. However, equally damaging effects occur where the information is published in an attributed article or book, or otherwise placed in the public domain by persons not necessarily engaged in clandestine intelligence activities. It is in these latter situations that the law is weak and unclear at best and altogether inapplicable at worst.

The recent actions of Philip Agee make a particular distressing case in point. As you know, Mr. Agee has made a practice over the last few years of exposing Agency personnel and operations whenever and wherever possible. He is now involved in the publication of a second book, Dirty Work: The CIA in Western Europe, which according to its advance promotions will include "detailed biographies of more than 700 undercover CIA and NSA personnel [redacted]

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[redacted] in virtually every corner of the earth." He has also been instrumental in the formation of a group that intends to publish a new periodical known as the "Covert Action Information Bulletin." It is evident from the first issue of this journal, dated July 1978, that the purpose is not merely criticism of CIA, which is certainly a protected form of speech, but also a systematic disclosure of the names of Agency personnel, which in my view is a form of speech that Congress can properly regulate, at least to the extent of legislating criminal sanctions that would be clearly applicable following an unauthorized act of publication. A copy of this first issue is enclosed for your review.

I deeply appreciate the personal consideration that you gave to the question of obtaining an order restraining the publication of Dirty Work. I also appreciate the fact that you have referred the entire matter to the Criminal Division. Here again, however, the trouble is that the available legal tools are very probably inadequate. I am told that the only two statutes that arguably cover the conduct involved are 18 U.S.C. §793(d) and (e), and that the applicability of these statutes is highly questionable.

There is reason to believe that the Congress would be responsive to a narrow piece of anti-disclosure legislation, if the Administration were to bring forward an appropriate agreed proposal. A readiness to consider such a proposal was evident yesterday at an informal hearing before the House Permanent Select Committee on Intelligence attended by members of your staff. In addition, a bill introduced in 1977 by Senator Bentsen, S. 1578, a copy of which is enclosed, has attracted a good deal of sympathetic attention in light of Mr. Agee's recent ventures.

One idea, and certainly the simplest one, would be to propose an amendment to an existing statute, namely, 18 U.S.C. §798. As you are aware, that statute was enacted without controversy in 1950. It proscribes the unauthorized disclosure, including publication, of classified information concerning cryptographic systems, cryptographic or communications intelligence equipment, or communications intelligence activities. I am enclosing a marked-up copy of this statute showing one way in which it might be amended in order to extend its coverage to the narrow category of additional information that is my greatest immediate concern. There are of course alternative ideas, such as Senator Bentsen's bill or some modified version of that bill. Obviously there is room for divergent views as to the best approach, but I think it is critically important that we face and resolve any differences and put forward a concrete Administration proposal.

I would like to suggest that members of our staffs meet promptly to discuss this problem, and that representatives of OMB, the Department of Defense, and perhaps the National Security Council and the Department of State be involved in such discussions,

Yours,



STANSFIELD TURNER

Enclosures

cc: Assistant to the President
for National Security Affairs

Secretary of State

Secretary of Defense

Director, Office of Management
and Budget